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**IN THE
COURT OF APPEALS OF INDIANA**

HAROLD FIELDS and
PAMELA MAE FIELDS,

Appellants-Defendants,

VS.

RALPH E. BAKER and
SUE A. BAKER,

Appellees-Plaintiffs.

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No. 24A01-0612-CV-582

APPEAL FROM THE FRANKLIN CIRCUIT COURT
The Honorable J. Steven Cox, Judge
Cause No. 24C01-0601-PL-22

September 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellants-Defendants, Harold Fields (Harold) and Pamela Mae Fields (collectively, the Fields) appeal the trial court's Findings of Fact and Conclusions of Law granting Appellees-Plaintiffs', Ralph and Sue Baker (the Bakers), request for a permanent injunction that prevents blocking part of a local roadway.

We affirm.

ISSUE

The Fields raise one issue on appeal, which we restate as follows: Whether the trial court abused its discretion in granting the Bakers' request for injunctive relief.

FACTS AND PROCEDURAL HISTORY

In 1967, the Fields purchased, by Warranty Deed, a 15.56-acre tract of land located in Laurel Township, Franklin County, Indiana. Immediately north of this 15.56-acre tract of land, the Fields own a 2.5-acre tract of land. On February 1, 1991, the Bakers acquired by Warranty Deed a 40-acre tract of land immediately east of the Fields' 15.56-acre tract of land. The Bakers' 40-acre tract of land has a permanent easement of ingress and egress that is fifteen feet wide, and travels along the line that originally divided the Fields' two tracts of land. To get to their property, the Bakers have to travel east or west on Chapel Road and then south on Fields Road until Fields Road intersects the aforementioned easement. (Fields Road was constructed six years before the Fields owned their tracts of land and runs north and south through both tracts of their land and dead ends just south of their southernmost property.)

Prior to the construction of Fields Road, an old county road was used to access the Fields' 15.56-acre tract of land and the easement leading to the Bakers' property. The old county road is located approximately 300 feet west of Fields Road running north and south along a creek, parallel to Fields Road. Since approximately 1961, Franklin County has not maintained the old county road, and it is not currently passable. However, since 1966, Franklin County has maintained and used Fields Road, and receives money from the State as a result of it being listed as a county road; the County plows snow off Fields Road and added a bus turn around at the southern end of the road. The Bakers and their guests also use Fields Road to access the easement to their property.

On October 30, 2005, the Fields blocked Fields Road. On January 20, 2006, the Bakers filed a Verified Complaint for an Injunction against the Fields. A trial was held July 13, 2006, after which the trial court took the matter under advisement. On September 29, 2006, the trial court entered the following Findings of Fact and Conclusions of Law, deciding, in pertinent part:

Comes now the [c]ourt upon Trial herein on [the Bakers'] Verified Complaint for Injunction and NOW FINDS as follows:

* * *

3. Evidence was elicited from [the Fields] to the effect that the *present location* of what is referred to as Fields Road was changed in the early 1960's. From such testimony, it appears that such roadway was altered by [Harold's] father and others in the early 1960's; such new roadway was moved slightly to the east of where the then existing roadway was situated.
4. [Testimony] elicited from Franklin County Commissioner Thomas Wilson and Franklin County Surveyor Joe Gillespie indicate[s] that the roadway as it now exists, and what has been referred to as Fields Road,

is included in the inventory of roads being maintained by the County, and is considered a county road. The evidence establishes that what is referred to as Fields Road has been maintained periodically by the County from the 1960's to date.

5. Testimony further established that after [the Bakers'] purchased their forty (40) acres identified herein, they have accessed such property by traveling on what is referred to as Fields Road, and crossing [the Fields'] property on the easement and right of way referenced in the parties' deeds.
6. Testimony establishes that [the Fields] blocked [the Bakers'] access to the easement referenced herein on or about October 30, 2005; previous litigation was had between these parties . . . regarding a dispute over the easement which has been referenced in these proceedings, and in the [c]ourt's Order entered July 22, 1998[,] resolving the easement in question, the [c]ourt referenced what has been referred to herein as Fields Road as a "county road."

CONCLUSIONS

The evidence presented established that the roadway known as Fields Road is a county roadway, and [the Bakers], or any other member of the public, are entitled to the use of such roadway. [The Fields] have blocked Fields Road, preventing [the Bakers] from traveling on such public way and preventing them from accessing the easement referenced herein and preventing them from accessing the forty (40) acre tract they own; [the Bakers] will suffer irreparable harm unless [the Fields] are restrained and enjoined from blocking Fields Road.

(Appellant's App. p. 5).

The Fields now appeal. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

The Fields contend that the trial court abused its discretion by granting the Bakers' Verified Complaint for an Injunction. Specifically, the Fields contend (1) the Bakers will not suffer irreparable harm if they are restrained from accessing Fields Road because there is a county road that intersects the easement, (2) the public interest would be

disserved by taking private property solely because the County chose to abandon maintenance of the existing county road, and (3) their injury would be greater than any injury suffered by the Bakers because the Fields are having property taken from them only to relieve the County of its obligation to maintain the existing county roadway.

The granting or denying of an injunction is within the discretion of the trial court, and this court's review is limited to the determination of whether or not the trial court clearly abused that discretion. *Stuller v. Daniels*, 869 N.E.2d 1199, 1208 (Ind. Ct. App. 2007). A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances, or if it misinterprets the law. *Id.* The difference between a preliminary and a permanent injunction is procedural: a preliminary injunction is issued while an action is pending, while a permanent injunction is issued upon a final determination. *Ferrell v. Dunescape Beach Club Condominiums Phase I, Inc.*, 751 N.E.2d 702, 712 -713 (Ind. Ct. App. 2001); *see also Plummer v. American Inst. of Certified Pub. Accountants*, 97 F.3d 220, 229 (7th Cir. 1996) (noting that permanent injunction, as opposed to preliminary injunction, is not provisional in nature, but rather is final judgment).

Our standard of review for injunctions is well settled:

When determining whether or not to grant an injunction, the trial court is required to make special findings of fact and conclusions of law. Upon review, the reviewing court's task is then to determine if the trial court's findings support the judgment. We will only reverse the trial court's judgment if it is clearly erroneous. Findings of fact are clearly erroneous when the record lacks evidence or reasonable inferences from the evidence to support them. We will consider the evidence only in the light most favorable to the judgment and construe findings together liberally in favor of the judgment.

The discretion to grant or deny an injunction is dependent upon the following factors: (1) whether the remedies at law available to the party seeking an injunction are inadequate, thus exposing that party to irreparable harm pending the resolution of the substantive action if the injunction does not issue; (2) whether granting the injunction would disserve the public interest; (3) whether the party has established a reasonable likelihood of success at trial by establishing a *prima facie* case, or demonstrated a reasonable likelihood of success on the merits, as the case may be; and (4) whether the injury to the party seeking the injunction outweighs the harm to the party who would be enjoined.

Stuller, 869 N.E.2d at 1208. Thus, when the plaintiff is seeking a permanent injunction, the second of the four traditional factors is slightly modified, for the issue is not whether the plaintiff has demonstrated a reasonable likelihood of success on the merits, but whether he has in fact succeeded on the merits. *Ferrell*, 751 N.E.2d at 713. Finally, permanent injunctions are limited to prohibiting injurious interference with rights. *Id.*

The Fields argue the Bakers would not suffer irreparable harm if enjoined from using Fields Road to access their property. Generally, the party seeking an injunction carries the burden of demonstrating an injury which is certain and irreparable if the injunction is denied. *Ferrell*, 751 N.E.2d at 713. Our review of the record in the instant case reveals the Bakers would suffer certain and irreparable harm if their petition for injunction were denied. Particularly, the original county road is no longer passable. In fact, there is no evidence the road was ever passable by motor vehicles as the road crosses a creek in more than one place and was previously traversed only by horse and buggy. Thus, we find the Bakers would suffer irreparable harm if enjoined from using Fields Road to access their property.

Next, the Fields argue taking their private property, specifically Fields Road, solely because the County chose to abandon maintenance on the existing county road would disserve the public interest. However, our review of the record reveals the County obtained a prescriptive easement with respect to Fields Road, and therefore Fields Road is no longer private property. On the contrary, we find it would disserve the public interest to prohibit the Bakers and others from accessing Fields Road.

A party claiming the existence of a prescriptive easement “must establish clear and convincing proof of (1) control, (2) intent, (3) notice, and (4) duration.”¹ The difference between adverse possession and a prescriptive easement is whether the adverse use was in the nature of a fee interest or an easement. *Wilfong v. Cessna Corp.*, 838 N.E.2d 403, 406 (Ind. 2005). Furthermore, “each element must be established as a necessary, independent, ultimate fact, the burden of showing which is on the party asserting the prescriptive title, and the failure to find any one such element is fatal, for such failure to find is construed as a finding against it.” *Id.* at 405.

In the instant case, we find the County’s actions meet each of the four requirements for a prescriptive easement, effectively granting the County a prescriptive easement to Fields Road. Specifically, in support of its judgment granting the injunction,

¹ These four elements are established by clear and convincing proof of the following: (1) control – the claimant must exercise a degree of use and control over the parcel that is normal and customary considering the characteristics of the land (reflecting the former elements of “actual,” and in some ways “exclusive,” possession); (2) intent – the claimant must demonstrate intent to claim full ownership of the tract superior to the rights of all others, particularly the legal owner (reflecting the former elements of “claim of right,” “exclusive,” “hostile,” and “adverse”); (3) notice – the claimant’s actions with respect to the land must be sufficient to give actual or constructive notice to the legal owner of the claimant’s intent and exclusive control (reflecting the former “visible,” “open,” “notorious,” and in some ways the “hostile,” elements); and, (4) duration – the claimant must satisfy each of these elements continuously for the required period of time (reflecting the former “continuous” element). *Wilfong v. Cessna Corp.*, 838 N.E.2d 403, 406 n.1 (Ind. 2005) (citing *Fraley v. Minger*, 829 N.E.2d 476, 486 (Ind. 2005)).

the trial court found, “[t]he evidence establishes that what is referred to as Fields Road ha[s] been maintained periodically by the County from the 1960’s to date,” evidencing the duration requirement. (Appellant’s App. p. 5.) Examples of maintenance provided by the County, indicating the normal and customary degree of control necessary to keep up a minimally used county road, include grading, graveling, and plowing snow from Fields Road beginning in 1966. Additionally, the County added a school bus turn around at the southern end of Fields Road. The trial court also found, “[The Bakers’] evidence elicited . . . the roadway as it now exists, and what has been referred to as Fields Road, is included in the inventory of roads being maintained by the County, and is considered a county road,” providing notice to the Fields that Fields Road is not a private roadway. (Appellant’s App. p. 5). As well, the County has been receiving money from the State of Indiana as a result of Fields Road being listed in the county system for more than twenty years indicating intent to claim full ownership. Thus, we find the County has a prescriptive easement for the use of Fields Road and it would disserve the public interest to preclude the Bakers’ from using the easement.

Lastly, the Fields argue their injury would be greater than any injury suffered by the Bakers if the injunction is granted because the Fields are having property taken from them only to relieve the County of its obligation to maintain the exiting county roadway. We disagree. The record before us indicates that the County has a prescriptive easement in Fields Road. Thus, Fields Road is no longer private property; instead, Fields Road is a county road. Therefore, the injury suffered by the Bakers, or anyone else desiring to use

Fields Road would be greater than any injury suffered by the Fields because Fields Road is a public roadway intended for public use.

CONCLUSION

Based on the foregoing, we find the trial court did not abuse its discretion in granting the Bakers' request for permanent injunction.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.